APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

105-56 PHILCO CORPORATION
168-56 CHRYSLER CORPORATION
216-56 WHIRLPOOL-SEEGER CORPORATION

v.

THE UNITED STATES

Order

These cases come before the court on defendant's motions for judgment on the pleadings, together with plaintiffs' responses thereto and the oral argument of counsel. Upon consideration thereof, and upon the basis of the decisions by this court in *General Motors Corp.* v. *United States*, No. 55-56, decided January 16, 1957 and July 16, 1958, and *Ford Motor Co.* v. *United States*, No. 231-56, decided December 4, 1957; certiorari denied in both cases on October 20, 1958,

IT IS ORDERED this seventeenth day of April, 1959, that defendant's motions for judgment on the pleadings be and the same are granted, and plaintiffs' petitions are dismissed.

BY THE COURT

MARVIN JONES
Chief Judge

APPENDIX B

The Legislative History

Prior to 1932 there had been a series of excise tax statutes, the first of which, for the present purposes, was the War Revenue Act of 1917. This and successor acts prior to 1932 laid the basis for regulations concerning the "price" on which the tax was to be computed.

These earlier regulations evolved into a multitude of rules for determining the taxed sales price. When the Congress was considering, at length, the adoption in 1932 of the first broad excise tax law it considered in detail the regulations on the tax price, and related matters, adopted under the earlier acts, and undertook to supersede such regulations by legislation.

When enacted, the Revenue Act of 1932 expressly reversed the regulatory inclusion of the tax itself within the taxed price unless the charge for the tax was separately stated on the invoice.[a] It virtually reversed the regulatory rule on the inclusion of transportation charges within the taxed price.[b] It materially modified the regulatory rule on the taxation of conditional sales.[c] It materially modified the regulatory rule on the taxation of consignment sales and the price to be taxed.[d] It generally reversed the regu-

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[a] The pre-1932 regulations (Article 3, Regulations 47, 1918 Revenue Act (TD 2832) and subsequent regulations) provided that the amount of the tax should be included in the taxed price unless the charge for the tax was separately stated on the invoice. The Act of 1932 provided that "there shall be excluded [from the taxed price] the amount of tax imposed by this title, whether or not stated as a separate charge." (Sec. 619, Revenue Act of 1932.)

[b] The pre-1932 regulations (Article 4, Regulations 47, 1926 Revenue Act and subsequent regulations) had provided, in effect, that freight charges are taxable as a part of the price unless the goods are sold and title passes at the factory, and freight charges are separately charged to the purchaser. The Act of 1932 provided that any transportation charge "shall be excluded from the price . . . if the amount thereof is established. . . ." (Sec. 619(a) of the Revenue Act of 1932.)

[c] The pre-1932 regulations (Article 9, Regulations 47, 1918 Revenue Act (TD 2832) and subsequent regulations) had provided, in effect, that the conditional sale of a taxable article was taxable when title passed or full payment was given, whichever was the earlier. The 1932 Act materially modified the rule, providing that "there shall be paid upon each payment" a proportional share of the total tax. (Sec. 619(c) of the Revenue Act of 1932.)

[d] The pre-1932 regulations (Article VI, Regulations 44, 1917 War Revenue Act (TD 2719) and subsequent regulations) had provided in effect that sales to retailers on consignment should be taxable at the time title passes to the retailer as shown by reports from the retailers. The 1932 Act provided that

latory rule disallowing tax recoveries in most cases involving discounts subsequent to the sale.[3]

Finally, and most significantly, it deleted the regulatory rule that permitted guaranty or warranty refunds to form the basis for a tax recovery only if the article was returned.[4] Instead it substituted the simple criterion that any price adjustment based upon a "bona fide discount, rebate, or allowance" will allow tax recovery.[5] The use of the term "allowance", a term that had not been used previously in the regulations or statutes, is clearly indicative of the Congressional intent to allow tax recoveries in *any bona fide* price adjustment situation.[6]

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consignment sales shall be taxed on the basis of the "price for which such articles are sold in the ordinary course of trade, by manufacturers." (Sec. 619(b), Revenue Act of 1932.)

[3] The pre-1932 regulations (Article 4, Regulations 47, 1928 Act) provided in effect that discounts after the sale cannot be deducted from the taxed price, except in the case of originally agreed upon quantity rebates and rebates for goods not resold. The deductible rebates would result in an adjustment in the tax for the month in which the rebates were made. The 1932 Act provided for a credit to "any person . . . when the price on which the tax was based is readjusted . . . by a bona fide discount, rebate, or allowance; . . ." (Sec. 621, Revenue Act of 1932, the statute here involved.) It may be noted here that the liberal term "allowance", not used in the regulations, was adopted by the Congress—probably because the terms "discounts" and "rebates" had been used in a parallel and related manner throughout the regulations.

[4] The pre-1932 regulations (Article 5, Regulations 47, 1918 Revenue Act—Revised 1920 (TD 3132) and subsequent regulations) had provided, in effect, that price refunds because of a "guaranty" as to quality or service shall result in a pro rata tax credit *if the article is returned*. The 1932 Act struck the condition that the article must be returned, providing simply that a credit may be allowed to "any person . . . when the price on which the tax was based is readjusted . . . by a *bona fide* discount, rebate, or *allowance*; . . ." (Emphasis supplied.) (Sec. 621, Revenue Act of 1932, the statute here involved.)

[5] The terms "discount" and "rebate" were used in the pre-1932 regulations virtually synonymously in the treatment of trade, cash and quantity rebates made subsequently to the sale. The more general term "allowance" was apparently added to assure that the earlier usage of the regulatory terms should not in any way restrict the liberality intended.